

AG Contract No : KR05-0309TRN
ADOT ECS File No : JPA 05-012
TRACS: SL476 01C
Project No : TEA PAT-(001)A
Section: Exterior Renovation
Patagonia Depot
Budget Source Item No : _____

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF PATAGONIA

THIS AGREEMENT is entered into this date 7 May 19th, 2005 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-964, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF PATAGONIA, acting by and through its Mayor and Town Council, (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

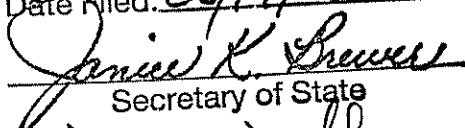
2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this Agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

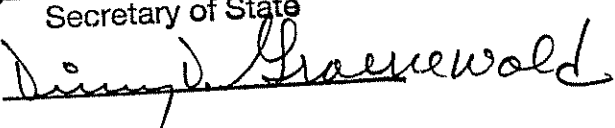
3. Congress has authorized appropriations for, but not limited to, transportation enhancements including the rehabilitation of historic transportation buildings, structures or facilities, train depots, and bridges

4. Such enhancement project lies within the boundary of the Town and has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.

5. The Town, in order to obtain Federal funds for the construction of the project, is willing to provide Town funds to match Federal funds in the ratio required or as finally fixed and determined by the Town, and FHWA, including actual construction engineering (CE) and administration costs.

6. The interest of the State in the project is in the acquisition of expended Federal funds for the use and benefit of the Town and to authorize such Federal funds for the project by Federal law and regulations

NO. 27522
Filed with the Secretary of State
Date Filed: 05/19/05

Secretary of State

By: 

7. This project involves restoring the exterior Patagonia's historic train depot hereinafter referred to as the "Project". The Town will be responsible for design, bidding, construction administration, electrical power, water connections and any related landscape maintenance that pertains to the Project. Responsibilities for each party are further defined under the scope of work of this Agreement.

The following estimated costs listed below:

Construction Tracs No.: SL476 01C	
Estimated Federal Aid Funds @ 94.3%	\$111,060.00
Estimated Town Funds @ 5.7%	\$ 6,712.00
Estimated design costs @ 100% by Town	\$ 12,000.00
<i>*Total Estimated Cost of the Project</i>	<u>\$129,772.00</u>

*(Includes construction, construction engineering administration, replacement of windows and incidentals)

The following estimated lead paint and asbestos remediation costs are listed below.

Remediation Tracs No :SL476 01X	
Estimated Federal Aid Funds @94.3%	\$141,450.00
Estimated Town Funds @ 5.7%	\$ 8,550.00
<i>*Total Estimated Remediation Cost</i>	<u>\$150,000.00</u>

THEREFORE, in consideration of the mutual covenants expressed herein, it is further agreed as follows:

II. SCOPE OF WORK

1. The State Shall:

a. Agree to be the Town's authorized agent for the Project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum Federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Fund any necessary asbestos and/or lead paint abatement on the Depot prior to the rehabilitation of the building, prior to the award of the construction contract. The remediation of lead in the soils surrounding the building will be done as a separate project after the construction phase is completed.

c. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designates the Town to self-administer the Project.

d. Fund any necessary asbestos and/or lead paint abatement prior to the rehabilitation of the building, prior to the award of the construction contract.

e. Upon execution of this Agreement, make payments to the Town for the direct actual cost of the construction of the Project, plus construction engineering, within thirty-days (30) after receipt and approval of an invoice.

f. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper maintenance as set forth in this Agreement.

2. The Town Shall:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of the FHWA and the State. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications at the lowest bid price

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the Town up to 94.3 percent of the construction cost. Construction administration costs not participated in by FHWA shall be borne by the Town.

c. Consent to any inspections performed by the State, provide records or audit any books of the Town, in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and federal government.

d. Upon execution of this Agreement, invoice the State for the estimated 94.3% federal aid construction and construction administration costs addressed under this Agreement. The Town is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this Agreement whether covered by federal funding or not, except for the aforementioned lead paint and asbestos abatement.

e. Upon completion of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance to the exterior of the Patagonia's historic train depot and all enhancement improvements, including but not limited to; electrical power, water, and landscape care, re-painting as needed, repairs, and replacement of broken windows.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project aside from the lead paint and asbestos abatement. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports and the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. The Town will require its contractor(s) to name the State and ADOT as an additional insured in the contractor(s) insurance policies. The Town will also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractor(s). It is understood and agreed that State's participation is confined to securing Federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the Town and that, to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the Town, each in the proportion described or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received

3. This Agreement shall remain in force and effect until completion of the work, related deposits and reimbursements are provided herein.

4. This Agreement shall become effective upon filing with the Secretary of State

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination"

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

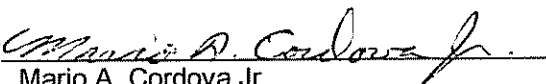
Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007 FAX (602) 712-7424

Town of Patagonia
Attn: Randy Heiss, Town Clerk
P.O. Box 767, 310 McKeown Avenue
Patagonia, AZ 85624

11. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

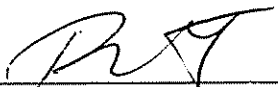
THE TOWN OF PATAGONIA

By 
Mario A. Cordova Jr.
Acting Mayor

STATE OF ARIZONA
Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
RANDY HEISS
Town Clerk

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RESOLUTION NO. 05-02

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PATAGONIA, SANTA CRUZ COUNTY, ARIZONA, AUTHORIZING THE ACTING MAYOR ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE EXTERIOR RENOVATION OF THE PATAGONIA TRAIN DEPOT.

WHEREAS, the Town of Patagonia has received a grant from the Arizona Department of Transportation - Transportation Enhancement Program in the amount of \$111,060 for improvements including but not limited to new roofing and windows, the repair or replacement of doors, trim, and siding, other miscellaneous repairs, and painting; and;

WHEREAS, this grant will also provide \$141,450 for the remediation of lead and asbestos contamination that has been identified outside of the building; and

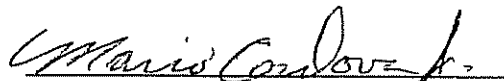
WHEREAS, the Mayor and Town Council have determined the work to be accomplished under this grant is in the best interest of the citizens of the Town of Patagonia; and

WHEREAS, it is necessary to execute an intergovernmental agreement between the Town of Patagonia and the Arizona Department of Transportation in order for payment of actual project costs to occur; and

WHEREAS, the Mayor and Council have reviewed the Intergovernmental Agreement, a copy of which is attached hereto as Exhibit A, and have determined that its approval is in the best interests of the Town and its residents.

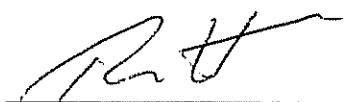
NOW THEREFORE, BE IT RESOLVED by the Mayor and Town Council of the Town of Patagonia, Arizona that the Acting Mayor is hereby authorized to execute the Intergovernmental Agreement with the Arizona Department of Transportation, a copy of which is attached hereto as Exhibit A.


PASSED AND ADOPTED at the regular meeting of the Mayor and Council of the Town of Patagonia this 13th day of April 2005, held in accordance with the provisions of Arizona Revised Statutes § 38-431.02 and Article 2-5 et. seq. of *The Code of the Town of Patagonia, Arizona, Revised 2004*, at which a quorum was present.


Mario Cordova Jr., Acting Mayor

ATTEST:

APPROVED AS TO FORM:


Randy Heiss, Town Clerk/Treasurer

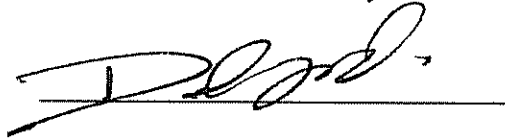

Daniel J. Hochuli, as Town Attorney
and not personally

ATTORNEY APPROVAL FORM

FOR THE TOWN OF PATAGONIA

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the Town of Patagonia, an agreement among public agencies, which, has been reviewed pursuant to A R S section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 2 day of May, 2005

A handwritten signature in black ink, appearing to be "J. D. ...", is written over a horizontal line.

Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0309TRN (**JPA 05-012**), an Agreement between public agencies, i.e., *The State of Arizona* and *The Town of Patagonia*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 24, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
905183